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N.C. GENERAL ASSEMBLY BILL TO INCORPORATE THE BEAUFORT AND N.C. RAILROAD

[Senate Doc. 74.]

A BILL

TO

INCORPORATE

THE

BEAUFORT AND NORTH CAROLINA

RAIL ROAD COMPANY.

RALEIGH:
Thos. J. Lemay, Printer to the State.
1850.

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Dec. 11, 1850.

[Introduced by Mr. ARENDELL. Passed first reading and referred to Committee on Internal Improvement and ordered to be printed.]

A BILL

To incorporate the Beaufort and North Carolina Rail Road Company.

I. *Be it enacted by the General Assembly of the State of North Carolina and it is hereby enacted by the authority of the same*, That for the purpose of effecting a Rail Road communication between the waters of Beaufort Harbour, in the County of Carteret, and the North Carolina Rail Road at its junction with the Wilmington and Raleigh Rail Road, in the County of Wayne, the formation of a corporate company, with a capital stock of dollars, is hereby authorised, to be called the Beaufort and North Carolina Rail Road Company; and when formed in compliance with the conditions herein after prescribed, to have a corporate existence as a body politic in perpetuity.

II. That the said Company be, and the same is hereby authorised to construct a Rail Road from the waters of Beaufort Harbour to the North Carolina Rail Road at its junction with the Wilmington and Raleigh Rail Road.

III. That for the purpose of creating the capital stock of said Company, the following persons be, and they are hereby appointed Commissioners, viz: whose duty it shall be to direct the opening of books for subscription of stock, at such times and places, and under the direction of such persons as they or a majority of them may deem proper; and the said commissioners shall have power to appoint a chairman of their body, Treasurer and all other officers, and to sue for and recover all sums of money that ought under this act to be received by them.

IV. That all persons who may hereafter be authorized to open books for subscription of stock by the commissioners herein appointed for that purpose, shall open said books at any time after the ratification of this act, twenty days previous notice being given in some one or more public newspaper or papers in this State; and that said books when opened shall be kept open for the space of thirty days at least and as long thereafter as the Commissioners first above mentioned shall direct; that all subscriptions of stock shall be in shares of

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each, the subscribers paying at the time of making such subscription five dollars on each share thus subscribed to the person or persons authorised to receive such subscription, and in case of failure to pay such sum all such subscriptions shall be void and of no effect; and upon closing the books all such sums as shall have been thus received of subscribers on the first cash instalment, shall be paid over to the general commissioners named in the third section of this act by the persons receiving them, and for failure thereof such person or persons shall be personally liable to said general commissioners, before the organization of said company and the company itself after its organization, to be recovered in the superior court of law within this State, in the county where such delinquent resides or if he resides in any other State, then in any court in such State having competent jurisdiction. The said general commissioners shall have power to call and require all persons empowered to receive subscriptions of stock at any time and from time to time as a majority of them may think proper, to make a return of the stock by them respectively and to make payment of all sums of money made by the subcribers. That all persons receiving subscription of stock shall pass receipts to the subscribers for the payment of the first instalment, as heretofore required to be paid; and upon their settlement with the general Commissioners, as aforesaid, it shall be the duty of the said general commissioners in like manner to pass their receipt for all sums thus received to the persons from whom received, and such receipts shall be taken and held to be good and sufficient vouchers to the persons holding them, that subscriptions of stock thus received to an amount not exceeding

V. It shall be the duty of said general commissioners to direct and authorize the keeping open of books for the subscription of stock in the manner above described until the sum of

dollars shall have been subscribed to the capital stock of said company; and as soon as the sum of

dollars shall have been subscribed and the first instalment of five dollars per share on said sum shall have been received by the general commissionrs, said company shall be regarded as formed; and the said commissioners, or a majority of them, shall sign and seal a duplicate declaration to that effect, with the names of the said subscribers appended, and cause one of said duplicates to be deposited in the office of the Secretary of State; and

thenceforth from the closing of the books of subscription as aforesaid, the said subscribers to the stock shall form one body politic and corporate, indeed and in law, for the purposes aforesaid, by the name and style of the [Beaufort and North Carolina Rail Road Company.]

VI. That whenever the sum of
dollars shall be subscribed in manner and form aforesaid, the subscribers, their Executors, Administrators and assigns, shall be, and they are hereby declared to be incorporated into a company, by the name and style of the "Beaufort and North Carolina Rail Road company;" and by that name shall be capable in law and in equity of purchasing, holding, selling, leasing, and conveying, estates real, personal and mixed, and acquiring the same by gift or devise, so far as shall be necessary for the purposes within the scope, object and interest of their charter, and no further; and shall have perpetual succession, and by their corporate name may sue and be sued, plead and be impleaded, in any Court of law and equity in the State of North Carolina; and may have and use a common seal, which they may alter and renew at pleasure, and shall have and enjoy all other rights and immunities which other corporate bodies may and of right do exercise; and may make all such by-laws, rules and regulations, as are necessary for the government of the corporation, or effecting the object for which it is created, not inconsistent with the constitution and laws of the United States and of the State of North Carolina.

VII. That notice of process upon the principal agents of said company, or the president or any of the directors thereof, shall be deemed and be taken to be due and lawful notice of service of process upon the company so as to bring it before any court within the State of North Carolina.

VIII. As soon as the sum of
dollars shall have been subscribed, in manner aforesaid, it shall be the duty of the general commissioners appointed under the third section of this act, to appoint a time for the stockholders to meet
, which they shall cause to be previously published for the space of thirty days, in one or more newspapers, as they may deem proper; at which time and place the said stockholders, in person or proxy, shall proceed to elect the directors of the company, and to enact such regulations and by laws, as may be necessary for the government of the corporation and the transaction of its business. The persons elected directors

at this meeting shall serve such period not exceeding one year, as the stockholders may direct, and at this meeting, the stockholders shall fix on the day and place or places where the subsequent election of directors shall be held; and such elections shall henceforth be annually made, but if the day of the annual election should pass without any election of directors, the corporation shall not be thereby dissolved, but it shall be lawful on any other day to hold and make such election in such manner as may be prescribed by a by-law of of the corporation.

IX. That the affairs of the company shall be managed and directed by a general board to consist of twelve directors to be elected by the stockholders from among their number at their first and subsequent general annual meetings as prescribed in section 8th of this act.

X. That the election of directors shall be by ballot, each stockholder having as many votes as he has shares in the stock of said company, and the person having a majority of all the votes polled shall be considered as duly elected.

XI. That the president of the company shall be elected by the directors from among their number, in such a manner as the regulations of the company shall prescribe.

XII. That at the first general meeting of the stockholders, directed to be called under section 8th of this act, a majority of all the shares subscribed shall be represented before proceeding to business; and if a sufficient number do not appear on the day appointed, those who do attend shall have power to adjourn from time to time until a regular meeting shall be thus formed; and at such meeting the stockholders may provide by a by-law as to the number of stockholders and the amount of stock to be held by them, which shall constitute a quorum for the transacting business at all subsequent regular or occasional meetings of stockholders and directors.

XIII. That at all elections and upon all votes taken in any general meeting of the stockholders, upon any by-law or any of the affairs of said company, each share of stock shall be entitled to one vote, and that any stockholder in said company may vote by proxy and proxies may be verified in such a manner as the stockholders by by-laws may prescribe.

XIV. That the general commissioners shall make their return of the shares of stock subscribed for at the first general meeting of stockholders, and pay over to the directors elected at said meeting, or their authorized agent,

all sums of money received from subscribers, and for failure thereof, shall be personally liable to said company, to be recovered at the suit of said company, in any of the superior courts of law in this State within the County where such delinquent or delinquents may reside, and in like manner from said delinquent's executors or administrators, in case of his or their death.

XV. That the board of directors may fill all vacances which may occur in it during the period for which they have been elected, and in the absence of the president, may fill his place by electing a president *pro tempore* from among their number.

XVI. That all contracts or agreements, authenticated by the President and Secretary of the board of directors, shall be binding on the company without a seal, or such a mode of authentication may be used as the company by their by-laws may adopt.

XVII That the company shall have power and may proceed to construct as speedily as possible, a rail road, with one or more tracks, to be used with steam power, which shall extend from the waters of Beaufort Harbour to the north Carolina Rail Road, at its junction with the Wilmington and Raleigh Rail Road, in the county of Wayne: Said company may use any part of the Rail Road constructed by them before the whole of said road shall be completed.

XVIII. That the said company shall have the exclusive right of conveyance or transportation of persons, goods, merchandise and produce over the said rail road, to be by them constructed, at such charges as may be fixed on by a majority of the Directors.

XIX. That the said company may, when they see fit, farm out their right of transportation over said Rail Road, subject to the rules above mentioned; and said company and every person who may have received from them the right of transportation of goods, wares, produce and merchandise entrusted to them for transportation ———

XX. That the board of directors may call for the payment of the sums subscribed as stock in said company in such instalments as the interest of said company may in their opinion require: the call of each payment shall be published in one or more newspapers in this State for the space of one month before the day of payment: and on failure of any stockholder to pay each instalment as thus required, the directors may sell at public auction, on a previous notice of ten days, for cash, all the stock subscrib-

ed for in said company, by such stockholder, and convey the same to the purchaser at said sale: and if said sale of stock does not produce a sum sufficient to pay off the incidental expenses of the sale, and the entire amount owing by such stockholder to the company for such subscription of stock, then and in that case the whole of such balance shall be held and taken as due at once to the company, and may be recovered of such stockholder or his executors, administrators or assigns, at the suit of said company, either by summary motion in any court of superior jurisdiction in the county where the delinquent resides, on a previous notice of ten days to said subscriber, or by the action of assumsit in any court of competent jurisdiction, or by a warrant before a justice of the peace where the sum does not exceed one hundred dollars; and in all cases of assignment of stock, before the whole amount has been paid to the company, then for all sums due on such stock, both the original subscribers and the first and all subseqent assignees shall be liable to the company, and the same may be recovered as above described.

XXI. That the debt of stockholders, due to the company for stock therein, either as original proprietor or as first or subsequent assignee shall be considered as of equal dignity with judgments in the distribution of assets of a deceased stockholder, by his legal representatives.

XXII. That said company shall issue certificates of stock to its members, and said stock may be transferred in such manner and form as may be directed by the by-laws of the company.

XXIII. That the said company may at any time, increase its capital to a sum sufficient to complete said Road not exceeding ... dollars, either by opening books for new stock, or by selling such new stock, or by borrowing money on the credit of the company, and on the mortgage of its charter and works; and the manner in which the same shall be done, in either cases shall be prescribed by the stockholders at a general meeting.

XXIV. That the board of directors once in every year, at least, make a full report of the state of the company, and its affairs, to a meeting of the stock-holders, and oftener, if required by a by-law, and shall have power to call a general meeting of the stockholders, when the board may deem it expedient; and the company may provide, in their by-laws, for occassional meetings being called and prescribe the mode thereof.

XXV. That the said company may purchase, have and hold, in fee, or for a term of years, any land, tenements, or hereditaments, which may be necessary for the said Road, or the appurtenances thereof, or for the erection of of depositories, store houses, houses for the officers, servants or agents of the company, or for work shops or foudaries, to be used for the said company, or for procuring stone or other materials necessary to the construction of the Road, or for effecting transportation thereon, and for no other purpose whatever.

XXVI. That the company shall have the right when necessary to conduct the said Road across or along any public Road or water course: *Provided*, That the said company shall not obstruct any public road, without constructing another equally as good and as convenient, nor without making a draw in any bridge of said road which may cross a navigable stream, sufficient for the passage of vessels navigating such stream.

XXVII. That when any lands or right of way may be required by said company for the purpose of constructing their road, and for want of agreement as to the value thereof, or from any other cause, the same cannot be purchased from the owner or owners, the same may be taken at a valuation to be made by five commissioners, or a majority of them, to be appointed by any court of record, having common law jurisdiction in the County where some part of the land or right of way is situated. In making the said valuation, the said commissioners shall take into consideration the loss or damage which may accrue to the owner or owners in consequence of the land or the right of way being surrendered, and the benefit and damages, he, she or they may receive from the erection or establishment of the rail road or work, and shall state particularly the value and amount of each; and the excess of loss and damage, over and above the advantage and benefit, shall form the measure of valuation of the said land or right of way: *Provided*, nevertheless, that if any person or persons over whose land the road may pass shall be dissatisfied with the valuation of said commissioners, then and in that case, the person or persons so dissatisfied may have an appeal to the Superior Court, in the County where the said valuation has been made, or in either county in which the land lies, when it may lie in more than one county, under the same rules, regulations and restrictions as in appeals from judgments of justices of the peace. The pro-

ceedings of the said commissioners, accompanied with a full description of the said land or right of way, shall be returned under the hands and seals of a majority of the commissioners, to the court from which the commission issued, there to remain a matter of record. And the lands or right of way so valued to the said commissioners, shall vest in the said company so long as the same shall be used for the purposes of said rail road, so soon as the valuation may be paid, or when refused, and may have been tendered: *Provided*, That on application for the appointment of commissioners, under this section it shall be made to appear to the satisfaction of the court that at least ten days previous notice has been given by the applicant to the owner or owners of land so proposed to be condemned, or if the owner or owners be infants or non compos mentis, then to the guardian of such owners if such guardian can be found within the county, or if he cannot be so found, then such appointment shall not be made unless notice of the application shall have been published, at least one month next preceding, in some newspaper printed as convenient as may be to the court house of the county and shall have been posted at the door of the court house on the first day of the term of said court, to which the application is made: *Provided further*, That the valuation provided for in this section shall be made on oath by the commissioners aforesaid, which oath, any justice of the peace, or clerk of the court of the county in which the land or a part of it lies, is hereby authorized to administer: *Provided further*, That the right of condemnation herein granted shall not authorize the said company to invade the dwelling house, yard, garden or burial ground of any individual, without his or her consent.

XXVIII. That the right of said company to condemn lands in the manner described in the 27th section of this act, shall extend to the condemning one hundred feet on each side of the main track of said road, measuring from the centre of the same, unless in case of deep cuts and fillings when said company shall have power to condemn as much in addition thereto as may be necessary for the purpose of constructing said road, and the company shall also have power to condemn and appropriate lands in like manner, for the constructing and building of depots, shops, ware-houses, buildings for servants, agents and persons employed on the road, not exceeding two acres in any one lot or station.

XXIX. That in the absence of any contract or contracts

with said company, in relation to lands through which the said road or its branches may pass, signed by the owner thereof or by his agent, or any claimant or person in possession thereof, which may be confirmed by the owner thereof, it shall be presumed that the land upon which the said road or any of its branches may be constructed, together with a space of one hundred feet on each side of the centre of said road, has been granted to the said company, shall have good right and title thereto, and shall have, hold and enjoy the same as long as the same be used for the purposes of said road and no longer, unless the person or persons owning the said land at the time that part of the said road which may be on the said land, was finished, or those claiming under him, her or them shall apply for an assessment of the value of the said lands, as herein before directed, within two years next after that part of said road which may be on the said land, was finished; and in case the said owner or or owners, or those claiming under him, her or them shall not apply within two years next after the said part was finished, he, she or they shall be forever barred from recovering said land or having any assessment or compensation thereof: *Provided*, nothing herein contained shall affect the rights of feme coverts or infants, until two years after the removal of their respective disabilities.

XXX. That all lands not heretofore granted to any person nor appropriated by law to the use of the State, within one hundred feet of the centre of said road, which may be constructed by the said company, shall vest in the company as soon as the line of the road is definitely laid out through it, and any grant of said land thereafter shall be void.

XXXI. That if any person or persons shall intrude upon said rail road by any manner of use thereof or of the rights or privileges connected therewith, without the permission or contrary to the will of said company, he, she or they may be indicted for misdemeanor, and upon conviction, fined and imprisoned by any court of competent jurisdiction.

XXXII. That if any person shall wilfully and maliciously or in any manner hurt or damage or obstruct, or shall wilfully or maliciously aid or assist, counsel or advise any other person or persons to destroy or in any manner to hurt, damage or destroy, injure or obstruct the said rail road, or any bridge or vehicle used for or in the transportation thereon, any water-tank, ware house, or

any other property of said company, such person or persons so offending, shall be liable to be indicted therefor, and on conviction, shall be imprisoned not more than six nor less than one month, and pay a fine not exceeding five hundred dollars, nor less than twenty dollars, at the discretion of the court before which said conviction shall take place, and shall be further liable to pay all expenses of repairing the same: and it shall not be competent for any person so offending against the provision of this clause to defend himself by pleading or giving in evidence that he was the owner, agent or servant of the owner of the land where such destruction, hurt, damage, injury, or obstruction was done at the time the same was done, or caused to be done.

XXXIII. That every obstruction to the safe and free passage of vehicles on the said road or its branches, shall be deemed a public nuisance, and may be abated as such by any officer, agent or servant of said company; and the person causing such obstruction may be indicted and punished for erecting a public nuisance.

XXXIV. That the said company shall have the right to take at the store-houses they may establish on, or annex to their rail road, or the branches thereof, all goods, wares, merchandise and produce intended for transportation, prescribe the rules of priority and charge, and receive such just and reasonable compensation for storage, as they by rules may establish, (which they shall cause to be published,) or as may be fixed by agreement with the owner, which may be distinct from the rates of transportation: *Provided*, That the said company shall not charge or receive storage on goods, wares, merchandise or produce, which may be delivered to their regular depositories for immediate transportation, and which the company may have power to transport immediately.

XXXV. That the profits of the company, or so much thereof as the general board may deem advisable, shall, when the affairs of the company will permit, be semi-annually divided among the stockholders, in proportion to the stock each may own.

XXXVI. That whenever it shall appear to the Board of Internal Improvements of this State, by a certificate under the seal of said company, signed by their Treasurer and countersigned by their President, that one third of the capital stock shall have been subscribed for and taken, and at least dollars of said stock has been actually paid into the hands of said Treasurer of said company, the said Board of Internal Improvements shall be

and they are hereby authorized and required, on behalf the State, to subscribe for stock in said company to the amount dollars to the capital stock of said company; and the subscription shall be paid in the following manner, to wit: The one fourth part as soon as the said company shall commence work, and one fourth thereof every six months thereafter until the whole subscription in behalf of the State shall be paid: *Provided*, The Treasurer and President of said company shall, before they receive the aforesaid instalments, satisfactorily assure the Board of Internal Improvements, by their certificates under the seal of said company, that an amount of the private subscription has been paid in equal proportion to the stock subscribed by the State

XXXVII. That if in case the present Legislature shall not provide the necessary and ample means to pay the aforesaid instalments on the stock subscribed for on behalf of the State, as provided for in the 36th section of this act; and in that event, the Board of Internal Improvement aforesaid shall, and they are hereby authorized and empowered to borrow, on the credit of the State, not exceeding dollars, as the same may be needed by the requirements of this act.

XXXVIII. That if in case it shall become necessary to borrow the money by this act authorized, the Public Treasurer shall issue the necessary certificates, signed by himself and countersigned by the Comptroller, in sums not less than one thousand dollars each, pledging the State for the payment of the sum therein mentioned, with interest thereon at the rate of interest not exceeding six per cent. per annum, payable semi-annually, at such times and places as the Treasurer may appoint, the principal of which certificates shall be redeemable at the end of thirty years from the time the same are issued: but no greater amounts of such certificates shall be issued at any one time than may be sufficient to meet the instalment required to be paid by the State at that time.

XXXIX. *Be it further enacted*, That the Comptroller shall register the said certificates at large in a book to be by him kept for that purpose, at the time he countersigns the same; and when he delivers the same to the Public Treasurer, he shall charge him in his books with the amount thereof, and also wth all such sums, if any, as the public Treasurer may obtain by way of premium

on the sale of the said certificates, an account of which the Public Treasurer shall render to the Comptroller, so soon as negociations from time to time for the sale of said certificates are closed.

XL. *Be it further enacted*, That if it shall become necessary to issue the certificates aforesaid, the Public Treasurer shall advertise in one or more newspapers as he may think best, and invite sealed proposals for such amount of the aforesaid sum of dollars, as may be wanted at any one time; and it shall be his duty to accept those terms which may be most advantageous to the State; *Provided*, That in no event shall any of the said certificates be sold for less than their par value: and any premium which may be obtained on the sale of said certificates shall be placed in the public treasury, and used as other public funds in the payment of interest on the debt hereby created.

XLI. *Be it further enacted*, That as security for the redemption of said certificates of debt, the public faith of the State of North Carolina is hereby pledged to the holders thereof, and in addition thereto all the stock held by the State in the North Carolina Railroad Company hereby created shall be and the same is hereby pledged for that purpose; and any dividends of profit which may from time to time be declared on the stock held by the State as aforesaid shall be applied to the payment of the interest accruing on said certificates; but until such dividend of profit may be declared, it shall be the duty of the Treasurer, and he is hereby authorized and directed, to pay all such interest, as the same may accrue, out of any moneys in the Treasury not otherwise appropriated.

XLII. *Be it further enacted*, That the certificates of debt hereby authorized to be issued, shall be transferable by the holders thereof, their agents or attornies, properly constituted, in a book to be kept by the Public Treasurer for that purpose; and in every instance where a transfer is made, the out-standing certificate shall be surrendered and given up to the Public Treasurer, and by him cancelled, and a new one, for the same amount, issued in its place to the person to whom the same is transferred.

XLIII. That the State shall appoint the number of directors in said company in proportion to the stock subscribed, who shall be appointed by the Governor, by and with the advice and consent of his Council, and removed in like manner.

XLIV. That the following officers and servants and per-

sons in the actual employment of the said company, be, and they are hereby exempted from jury and ordinary military duty: The president and treasurer of the board of directors, and chief and assistant engineers, the secretaries and accountants of the company, keepers of the depositories, guards stationed on the road to protect it from injury, and such persons as may be working the locomotive engines and travelling with cars for the purpose of attending to the transporting of produce, goods and passengers on said road.

XLV. *Be it further enacted*, That all the works hereby required of the Beaufort and North Carolina Rail Road Company shall be executed with due diligence, and if they be not commenced within three years after the ratification of this act, and finished within ten years after the period of their commencement, this charter shall be forfeited.